

**Chapter 18.385**  
**MISCELLANEOUS PERMITS**

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**18.385.010 Historic Overlay-Related Permits**

A. Criteria for historic overlay district designation.

1. Approval of an historic overlay district designation shall be made by means of a Type IIIB procedure, as governed by Section 18.390.050, when the Historic Sites and Districts Committee finds that any of the following criteria have been met:
  - a. The proposed district or landmark would serve the purpose of the historic overlay district as stated in Section 18.740.010, Purpose;
  - b. The site or area proposed for the designation reflects the broad cultural or natural history of the community, state or nation;
  - c. The site or area is identified with historic personages, or with important events in national, state or local history;
  - d. The site or area proposed for the designation embodies the distinguishing characteristics of an architectural specimen inherently valuable for a study of a period, style or method of construction; or
  - e. The proposed site or area is a notable work of a master builder, designer or architect.
2. The age of a specific building is not sufficient in itself to warrant designation as historic.

B. Criteria for removal of historic overlay district designation. Removal of an historic overlay district designation shall be made by means of a Type IIIB procedure, as governed by Section 18.390.050, when the Historic Sites and Districts Committee finds that any of the following criteria have been met:

1. The original historic overlay district designation was placed on the site in error;
2. The resource designated with the historic overlay district designation has ceased to exist;
3. The resource designated with the historic overlay district designation is no longer of significance to the public; or
4. The historic overlay district designation is causing the property owner to bear an unfair economic burden to maintain the property as an historic or cultural resource.

- C. Criteria for exterior alterations. Approval for exterior alterations of structures in an historic overlay district shall be granted by means of a Type II procedure, as governed by Section 18.390.040, by the Director using the following criteria:
1. The purpose of the historic overlay district as set forth in Section 18.740.010;
  2. The economic use of the structure in a historic overlay district and the reasonableness of the proposed alteration and their relationship to the public interest in the structure's or landmark's preservation or renovation;
  3. The value and significance of the structure or landmark in an historic overlay district;
  4. The physical condition of the structure or landmark in an historic overlay district; and
  5. The general compatibility of exterior design, arrangement, proportion, detail, scale, color, texture, and materials proposed to be used with an existing structure in an historic overlay district.
- D. Criteria for construction of new structures. Approval for exterior alterations of structures in an historic overlay district shall be granted by means of a Type II procedure, as governed by Section 18.390.040, by the Director using the following criteria:
1. The purpose of the historic overlay district as set forth in Section 18.740.010;
  2. The economic effect of the new structure on the historic value of the district;
  3. The visual effect of the proposed new structure on the architectural character of the district; and
  4. The general compatibility of the exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used in the construction of the new building or structure.
- E. Criteria for demolition. Approval for demolition of structures in an historic overlay district shall be granted by means of a Type II procedure, as governed by Section 18.390.040, by the Director using the following criteria:
1. The purpose of this chapter as set forth in Section 18.740.010;
  2. The criteria used in the original designation of the district in which the property under consideration is situated;
  3. The historical and architectural style, the general design, arrangement, materials of the structure in question, or its appurtenant fixtures; the relationship of such features to similar features of the other buildings within the district, and the position of the building or structure in relation to public rights-of-way, and to other buildings and structures in the area;
  4. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the district which cause it to possess a special character or special historical or aesthetic interest or value; and

5. Whether denial of the permit will subject the City to potential liability, involve substantial hardship to the applicant, and whether issuance of the permit would act to the substantial detriment of the public welfare and would be contrary to the intent and purposes of this title.

#### **18.385.020 Home Occupation Permits**

- A. Type I home occupation permit. A Type I home occupation permit will be processed by means of a Type I procedure, as governed by Section 18.390.030, after a demonstration that the proposal complies with all development criteria in Sections 18.742.040A and 18.742.050 A1.
- B. Type II home occupation permit. A Type II home occupation permit will be processed by means of a Type II procedure, as governed by Section 18.390.040, after a demonstration that the proposal complies with all development criteria in Sections 18.742.040A and 18.742.050 A2. and subject to the following approval criteria:
  1. Is in conformance with the standards contained in this chapter; and
  2. Will be subordinate to the residential use of the property; and
  3. Is undertaken in a manner that is not detrimental nor disruptive in terms of appearance or operation to neighboring properties and residents.
- C. Conditions of approval. The Director may impose conditions upon the approval of a Type II home occupation permit to ensure compliance with the requirements of this chapter. These conditions may include, but are not limited to, the following:
  1. Further limiting the hours, days, place and manner of operation;
  2. Requiring site and building design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;
  3. Requiring additional building setbacks, and increased lot area, depth or width;
  4. Further limiting the building area and outdoor storage used by the home occupation and restricting the location of the use on the site in relationship to adjoining uses;
  5. Designating the size, number, location and design of vehicle access points;
  6. Requiring street right-of-way to be free at all times of vehicles associated with the home occupation;
  7. Requiring landscaping, buffering and/or screening, of the home occupation from adjoining uses and establishing standards for the continued maintenance of these improvements;
  8. Requiring storm drainage improvements, and surfacing of parking and loading areas;
  9. Limiting the extent and type of interior or exterior building remodeling necessary to accommodate the home occupation;
  10. Limiting or setting standards for the location and intensity of outdoor lighting;

11. Requiring and designating the size, height and location of fences and materials used for their construction;
12. Requiring the protection and preservation of existing trees, and other vegetation, watercourses, slopes, wildlife habitat areas and drainage areas;
13. Limiting the type and number of vehicles or equipment to be parked or stored on the site; ~~and~~
14. Any other limitations which the Director considers to be necessary or desirable to make the use comply with the purposes stated in Sections 18.745.040 and 18.742.050.

D. Grounds for revocation. The Director may:

1. Revoke a home occupation approval if the conditions of approval have not been or are not being complied with and the home occupation is otherwise being conducted in a manner contrary to this chapter.
2. The Director shall approve the use as it exists, revoke the home occupation permit, or compel measures to be taken to ensure compatibility with the neighborhood and conformance with this chapter after reviewing a complaint. Complaints may be originated by the City of Tigard or the public. Complaints from the public shall clearly state the objection to the home occupation, such as:
  - a. Generation of excessive traffic;
  - b. Exclusive use of on-street parking spaces;
  - c. Other offensive activities not compatible with a residential neighborhood.

E. Cessation of home occupation pending review If it is determined by the Director in exercise of reasonable discretion, that the home occupation in question will affect public health and safety, the use may be ordered to cease pending Hearings Officer review and/or exhaustion of all appeals.

F. Waiting period for re-application. When a home occupation permit has been revoked due to violation of these standards, a minimum period of one year shall elapse before another application for a home occupation on the subject parcel will be considered.

G. Invalidation of permit. A home occupation permit shall become invalid if the applicant moves his or her residence.

### **18.385.030 Non-Conforming Use Confirmation**

A. Permit requirement. Using a Type I procedure, as governed by Section 18.390.030, the following criteria shall be used by the Director to issue a confirmation of legal nonconforming use:

1. Proof that the use was permitted by this title at the time it was established, by any of the following:
  - a. Copies of building and/or land use permits issued at the time the use was established;
  - b. Copies of zoning code provisions and/or maps;

- c. Demonstration that the use was established before the first development code for the community was adopted.
2. Proof that the use has been maintained over time. This includes copies of the one or more of the following evidence for every other year from the time the use was established until the current year. Standard evidence that the use has been maintained over time includes:
  - a. Utility bills;
  - b. Income tax records;
  - c. Business licenses;
  - d. Listings in telephone, business and Polk directories;
  - e. Advertisements in dated publications, e.g., trade magazines, and/or;
  - f. Building, land use or development permits.

#### **18.385.040 Sensitive Lands Permits**

- A. Permits required. An applicant who wishes to develop within a sensitive area, as defined in Chapter 18.775, must obtain a permit in certain situations. Depending on the nature and intensity of the proposed activity within a sensitive area, either a Type II or Type III permit is required, as delineated in Section 18.775.015 D and E. The approval criteria for various kinds of sensitive areas, e.g., floodplain, are presented in Subsections B - E below.
- B. Within the 100-year floodplain. The Hearings Officer shall approve, approve with conditions or deny an application request within the 100-year floodplain based upon findings that all of the following criteria have been satisfied:
  1. Land form alterations shall preserve or enhance the floodplain storage function and maintenance of the zero-foot rise floodway shall not result in any encroachments, including fill, new construction, substantial improvements and other development unless certified by a registered professional engineer that the encroachment will not result in any increase in flood levels during the base flood discharge;
  2. Land form alterations or developments within the 100-year floodplain shall be allowed only in areas designated as commercial or industrial on the comprehensive plan land use map, except that alterations or developments associated with community recreation uses, utilities, or public support facilities as defined in Chapter 18.120 of the Community Development Code shall be allowed in areas designated residential subject to applicable zoning standards;
  3. Where a land form alteration or development is permitted to occur within the floodplain it will not result in any increase in the water surface elevation of the 100-year flood;
  4. The land form alteration or development plan includes a pedestrian/bicycle pathway in accordance with the adopted pedestrian/bicycle pathway plan, unless the construction of said pathway is deemed by the Hearings Officer as untimely;

5. The plans for the pedestrian/bicycle pathway indicate that no pathway will be below the elevation of an average annual flood;
  6. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands approvals shall be obtained; and
  7. Where land form alterations and/or development are allowed within and adjacent to the 100-year floodplain, the City shall require the dedication of sufficient open land area within and adjacent to the floodplain in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the adopted pedestrian/bicycle pathway plan.
- C. With excessive slopes. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit on slopes of 25% or greater or unstable ground based upon findings that all of the following criteria have been satisfied:
1. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
  2. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  3. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock; and
  4. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening.
- D. Within drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:
1. The extent and nature of the proposed land form alteration or development will not create site disturbances to the extent greater than that required for the use;
  2. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
  3. The water flow capacity of the drainageway is not decreased;
  4. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;

5. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;
  6. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands approvals shall be obtained; and
  7. Where land form alterations and/or development are allowed within and adjacent to the 100-year floodplain, the City shall require the dedication of sufficient open land area within and adjacent to the floodplain in accordance with the Comprehensive Plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the adopted pedestrian bicycle pathway plan.
- E. Within wetlands. The Director shall approve, approve with conditions or deny an application request for a sensitive lands permit within wetlands based upon findings that all of the following criteria have been satisfied:
1. The proposed land form alteration or development is neither on wetland in an area designated as significant wetland on the Comprehensive Plan Floodplain and Wetland Map nor is within 25 feet of such a wetland;
  2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than the minimum required for the use;
  3. Any encroachment or change in on-site or off-site drainage which would adversely impact wetland characteristics have been mitigated;
  4. Where natural vegetation has been removed due to land form alteration or development, erosion control provisions of the Surface Water Management program of Washington County must be met and areas not covered by structures or impervious surfaces will be replanted in like or similar species in accordance with Chapter 18.745, Landscaping and Screening;
  5. All other sensitive lands requirements of this chapter have been met;
  6. The provisions of Chapter 18.790, Tree Removal, shall be met; and
  7. Physical Limitations and Natural Hazards, Floodplains and Wetlands, Natural Areas, and Parks, Recreation and Open Space policies of the Comprehensive Plan have been satisfied.

#### **18.385.050 Temporary Use Permits**

- A. Seasonal and special events. Using a Type I procedure, as governed by Section 18.390.030, the Director shall approve, approve with conditions or deny based on findings that all of the following criteria are satisfied:
1. The use occurs only once in a calendar year and for no longer a period than 30 days;
  2. The use is permitted in the underlying zoning district;
  3. The applicant has proof of the property-owner's permission to place the use on his/her property;

4. There will be no parking utilized by the customers and employees of the temporary use which is needed by the property owner to meet his/her minimum parking requirement, as governed by Chapter 18.765, Parking and Loading.
  5. The use will provide adequate vision clearance, as governed by Chapter 18.795, Vision Clearance, and shall not obstruct pedestrian access on public rights-of-way.
- B. Unforeseen/Emergency Situations. Using a Type II procedure, as governed by Section 18.390.040, the Director shall approve, approve with conditions or deny based on findings that all of the following criteria are satisfied:
1. The need for the use is the direct result of a casualty loss such as fire, wind storm, flood or other severe damage by the elements to a pre-existing structure or facility previously occupied by the applicant on the premises for which the permit is sought;
  2. The use of a mobile or manufactured home on a lot with an existing dwelling unit is necessary to provide adequate and immediate health care for a relative who needs close attention who would otherwise be required to receive needed attention from a hospital or care facility;
  3. The applicant has been evicted within 60 days of the date of the application from a pre-existing occupancy of the premises for which the permit is sought as a result of condemnation proceedings by a public authority, or eviction by abatement of nuisance proceedings, or by determination of a public body or court having jurisdiction that the continued occupancy of the facilities previously occupied constitutes a nuisance or is unsafe for continued use; or
  4. There has been a loss of leasehold occupancy rights by the applicant due to unforeseeable circumstances or other hardship beyond the foresight and control of the applicant;
  5. There exists adequate and safe ingress and egress when combined with the other uses of the property, as required by Chapter 18.705, Access, Egress and Circulation, and Chapter 18.795, Visual Clearance;
  6. There exists adequate parking for the customers of the temporary use as required by Chapter 18.765, Off-Street Parking;
  7. The use will not result in congestion on adequate streets;
  8. The use will pose no hazard to pedestrians in the area of the use;
  9. The use will not create adverse off-site impacts including noise, odors, vibrations, glare or lights which will affect adjoining use, in a manner which other use allowed outright in the zone, would not affect adjoining use; and
  10. The use can be adequately served by sewer or septic system and water, if applicable.
- C. Temporary sales office or model home. By means of a Type I procedure, as governed by Section 18.390.030, the Director may approve, approve with conditions or deny the use of any real property within the City as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within this City, but for no other purpose, provided the following criteria are satisfied:

1. Temporary sales office:

- a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold; and
- b. The property to be used for a temporary sales office shall not be permanently improved for that purpose.

2. Model house:

- a. The model house shall be located within the boundaries of the subdivision or tract of land where the real property to be sold is situated; and
- b. The property to be used for a model house shall be a permanently designed dwelling structure.

D. Temporary Building. Using a Type II procedure, as governed by Section 18.390.040, The Director may approve, approve with conditions or deny a temporary trailer or prefabricated building for use on any real commercial or industrial property within the City as a temporary commercial or industrial office or space associated with the primary use on the property, but for no other purpose, providing the following criteria are satisfied:

1. The temporary trailer shall be located within the boundaries of the parcel of land on which it is located;
2. The property to be used for a temporary trailer shall already be developed;
3. There exists adequate and safe ingress and egress when combined with the other uses of the property; as required by Chapter 18.705, Access, Egress and Circulation, and Chapter 18.795, Visual Clearance;
4. There exists adequate parking for the customers or users of the temporary use as required by 18.765, Off-Street Parking;
5. The use will not result in congestion on adequate streets;
6. The use will pose no hazard to pedestrians in the area of the use;
7. The use will not create adverse off-site impacts including noise, odors, vibrations, glare or lights which will effect the adjoining uses in a manner which other uses allowed outright in the zone would not affect the adjoining uses;
8. The use can be adequately served by sewer or septic system and water, if applicable; and
9. The length of time that the temporary building will be used is the maximum needed to address the hardship.

## **18.385.060      Tree Removal Permits**

- A. Approval criteria. Using a Type I procedure, as governed by Section 18.390.030, the following approval standards shall be used by the Director for the issuance of a tree removal permit on sensitive lands:
1. Removal of the tree must not have a measurable negative impact on erosion, soil stability, flow of surface waters or water quality as evidenced by an erosion control plan which precludes:
    - a. Deposits of mud, dirt, sediment or similar material exceeding 1/2 cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge or as a result of the action of erosion.
    - b. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on site using the techniques of Chapter 5 of the Washington County Unified Sewerage Agency Environmental Protection and Erosion Control rules.
  2. Within stream or wetland corridors, as defined as 50 feet from the boundary of the stream or wetland, tree removal must maintain no less than a 75% canopy cover or no less than the existing canopy cover if the existing canopy cover is less than 75%.
- B. Effective date of permit. A tree removal permit shall be effective for one and one-half years from the date of approval.
- C. Extension. Upon written request by the applicant prior to the expiration of the existing permit, a tree removal permit shall be extended for a period of up to one year if the Director finds that the applicant is in compliance with all prior conditions of permit approval and that no material facts stated in the original application have changed.■